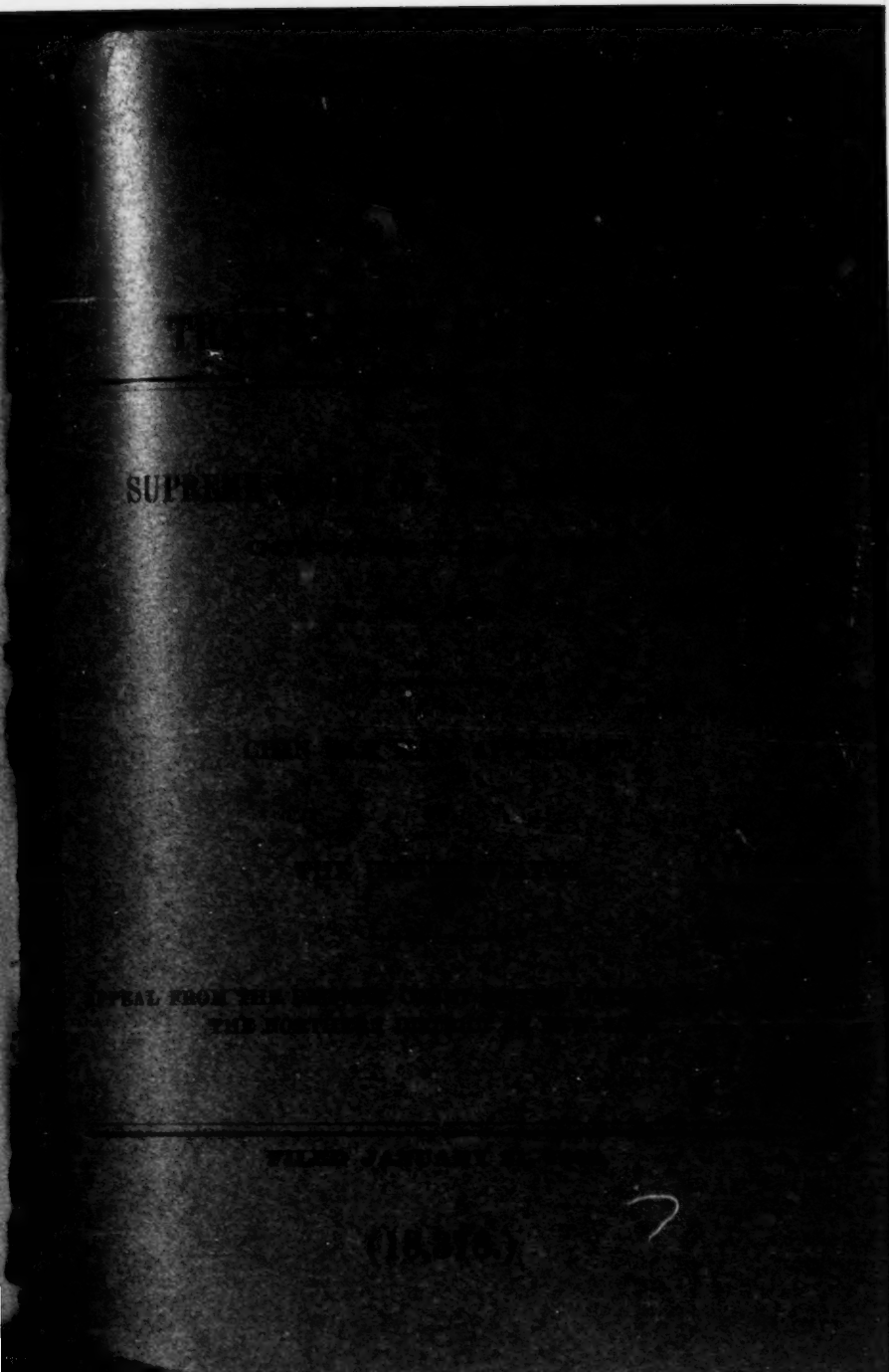

(18,378.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 525.

CHIN BAK KAN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Petition for appeal from decision of United States commissioner	1	1
Affidavit on appeal from decision of United States commissioner	2	1
Order allowing appeal from decision of United States commissioner	3	2
Return of United States commissioner	5	2
Testimony of Gong Wing (defendant's witness)	7	3
Terrance F. McGowan (complainant's witness)	15	9
Lee Sing (complainant's witness)	17	11
Judgment of deportation	25	16
Complaint	29	17
Warrant to apprehend	30	18
Order dismissing appeal and affirming decision of United States commissioner	32	19
Bond releasing defendant pending appeal to United States Supreme Court	33	19
Petition for appeal to United States Supreme Court, with stay and proof of service	36	21
Bond for damages and costs on appeal	38	22
Assignment of errors	41	23
Citation (original)	44	25
Clerk's certificate	46	25

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1902.

1 *Petition for Appeal from Decision of U. S. Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHIN BAK KAN, Defendant.

The above-named defendant feeling aggrieved by the order made and entered on the 20th day of July, 1901, in the above-entitled action by Hon. Fred W. Dudley, United States commissioner, in and for the said district, by which it was adjudged that said defendant was a Chinese person found unlawfully in the United States, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the said United States district court, in and for the northern district of New York, for the reasons specified in the assignment of errors, which is filed herewith; and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated July 27th, 1901.

Yours, etc.,

JOHN B. RILEY,
Attorney for Defendants.

Office & post-office address: Plattsburgh, N. Y.

The foregoing appeal is allowed.

A. C. COXE.

2 *Affidavit on Appeal from Decision of U. S. Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against
CHIN BAK KAN, Defendant.

UNITED STATES OF AMERICA,
Northern District of New York, } ss:

John B. Riley, being duly sworn, says: That he is the attorney for the defendant in the above-entitled cause, and, upon information and belief, alleges that the order made by the commissioner herein is erroneous and against the just rights of the said defendant, for the following reasons:

First. The commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

Second. That the commissioner on such trial rejected proper evidence showing the rights of the defendant to be and remain in the United States, and admitted immaterial, improper and incompetent testimony.

Third. For other errors appearing in the record of said trial.

JOHN B. RILEY.

Subscribed and sworn to before me this 27th day of July, 1901.
D. J. CLEARY,
Notary Public.

3 *Order Allowing Appeal from Decision of U. S. Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against
CHIN BAK KAN, Defendant.

On this 31st day of July, 1901, it is ordered, that the appeal be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal and order allowing the appeal be served upon the United States attorney, and that service be made forthwith by mail, and that a copy of the said papers be served upon the said United States commissioner, Hon. Fred W. Dudley, and Warren Dow, deputy United States marshal.

And it is further ordered that the plaintiff, through its attorney, Hon. George B. Curtiss, be and appear at a session of the United States district court, in and for the northern district of New York, appointed to be held at the city of Utica on the 10th day of Sept., 1901, pursuant to a notice of appeal and allowance thereof filed in the clerk's office of the northern district of New York, wherein The United States of America is plaintiff and Chin Bak Kan is defend-
ant, to show cause, if any, why the judgment and order
4 rendered against the said defendant, as in the said notice of
appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. Fred W. Dudley, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

A. C. COXE, *U. S. J.*

Indorsed: Petition, affidavit & order. Filed Aug. 3, 1901. W. S. Doolittle, clerk.

5 United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
vs.
CHIN BAK KAN.

To the district court of the United States for the northern district of New York:

Pursuant to the annexed writ, I the undersigned, do respectfully return to the said court that the following are all the proceedings

taken in the above-entitled action, including all the evidence given therein, and the judgment rendered therein, except the exhibits received in evidence, which are not in my possession.

Dated this 6th day of September, 1901.

FRED W. DUDLEY,
United States Commissioner, Northern Dist. of New York.

6 United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHIN BAK KAN.

Hearing had in the above-entitled case before William V. S. Woodward, Esq., United States commissioner, at the court-house, in Plattsburgh, New York, on the 27th day of April, 1901, 3 o'clock, p. m.

Appearances.

Thomas F. Dwyer, Esq., appears for United States.
Hon. John B. Riley appears for defendant.
Defendant in court in charge of Marshal Dow.
Frank C. Parks, sworn as interpreter.
The counsel for the defendant admits that the defendant is a Chinese person and not a member of the exempt class, and that he came into the United States from the Dominion of Canada.

7 GONG WING, sworn as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. RILEY:

Q. How old are you?
A. Forty.
Q. How long since you first came to the United States?
A. Twenty-five years.
Q. You landed where?
A. San Francisco.
Q. How long did you remain there?
A. Ten years.
Q. Where did you live?
A. No. 847 Dupont St., San Francisco.
Q. Then where did you go?
A. Came to Chicago.
Q. How long did you stay there?
A. Three years.
Q. What street and number?
A. Sixteenth St., I forgot the number.
Q. Then where?
A. Went back to China.
Q. How many years did you stay there?

A. Two years.
Q. Then where?
A. Came back to the United States, to New York.
Q. What place?
A. No. 19 Mott St.
Q. How long did you stay there?
A. A few months.
Q. Then where?
A. No. 239 West 37th St.
Q. How long did you stay there?
A. Six years.
Q. Then where did you go?
A. Went back to China from New York.
Q. How long did you stay in China?
A. Two years.
Q. Then where?
A. Came back to United States, to New York.
Q. What place?
A. No. 496 Seventh Ave.
Q. How long did you stay there?
A. About two years, not quite two years.
Q. Then where?
A. I am there now.
Q. Do you know the defendant, Chin Bak Kan?
A. Yes, I do.
8 Q. Is he related to you?
A. My sister's boy.
Q. Do you know where he was born?
A. Born in San Francisco.
Q. Where?
A. No. 847 Dupont St.
Q. Were you living in the same house at the time of his birth?
A. Yes, sir.
Q. Living as a member of your sister's family?
A. Yes, sir.
Q. How long did you know the defendant in San Francisco?
A. I knew him for the first seven years I was there in San Francisco.
Q. How old is the defendant now?
A. Twenty-two years old.
Q. Where did you next see the defendant?
A. In China.
Q. How long ago, when was the last time you saw him in China?
A. About two years ago I saw him in China.
Q. What was your sister's husband's name?
A. Chin Ying.
Q. Was he living in San Francisco at the time the defendant was born?
A. Yes, sir.
Q. What was his business there?

A. Chinese grocery and Japanese goods.
Q. At what number, what place?
A. *No.* 847 *Dupont St.*
Q. Did he occupy the first floor?
A. Yes, sir.
Q. What was on the second floor?
A. My sister lived there.
Q. How many stories to the building?
A. Three stories.
Q. What was the third floor used for?
A. Rooms.
Q. Where were you born in China?
A. Sun Ning district, Tai Young Mee.
Q. How often did you see the defendant in China?
A. Very frequently, sometimes three times a month, sometimes twice a month and sometimes once a month.

9 Q. Can you point out the defendant?

A. Witness points out the defendant.

Cross-examination by Mr. DWYER:

Q. Have you got a labor certificate?
A. Yes, sir.

Q. Witness requested to produce his labor certificate?
A. Certificate produced.
(Certificate shown witness.)

Q. Is that your certificate?
A. Yes, sir.

Mr. Dwyer offers certificate in evidence for identification of the witness.

The defendant's counsel objects upon the ground that it is incompetent, immaterial and the defendant is under no obligation to produce it; that it is not binding upon the defendant, but only for the protection of the witness.

Objection overruled.

Certificate received in evidence

Marked Plaintiff's Exhibit A.

Labor certificate, No. 28,108, issued to Gong Wing, on the 12th day of February, 1894, at New York, by Ferdinand Eidman, collector of internal revenue, third district of New York.

Q. What year did you first come to the United States?
A. Second year of Kwong Suey.
Q. Where did you land when you came to the United States the first time?
A. San Francisco.
Q. What steamer did you come over on?
A. Pekin.
Q. How old were you when you came?

A. Fifteen years old.
Q. What did you do while you were in San Francisco?
A. Cook.
Q. Who did you cook for?
A. I cooked for Mr. General Coffield.
Q. How long did you cook for Mr. Coffield?
A. Two years.
Q. What did you do then?
A. Worked for Hicksley.
Q. How long did you remain there?
A. About six years.
Q. Then where did you go?
A. Different places in a week or so, so many I forgot where.
Q. When did your sister come to San Francisco?
A. My sister and her husband came the same time I did.
Q. How long did your sister remain in San Francisco?
A. She lived there ten years.
Q. Was she married when she came or was she married in San Francisco?
A. Married in China.
Q. Where is your sister now?
A. In China.
Q. Had your sister ever been back to the United States since she went back with this defendant?
A. No, sir.
Q. Where is your brother-in-law?
A. In China now.
Q. When did he go back to China?
A. He went home at the same time my sister and her boy went home; they went back to China together.
Q. What year was this nephew of yours born in?
A. Fifth year of Kwong Suey.
Q. What business was your brother-in-law in in San Francisco?
A. Chinese grocery and Japanese goods.
Q. What was the name of the firm?
A. Sang Wah.
Q. Is any of that firm still there?
A. Yes, sir.
Q. Which of the members of the firm are there now?
A. I don't know who are there now.
Q. What year did you go back to China the first time?
A. I don't know; the 17th or 18th year of Kwong Suey.
Q. What did you do while you were in Chicago?
A. Laundry.
Q. At what number?
A. I forgot the number, but 16th street.
Q. Did you run a laundry yourself or work for somebody else?
A. Myself.
Q. Where did you go from Chicago?
A. Went back to China.
Q. What year was that?

A. About the 17th or 18th year of Kwong Suey.
Q. Where did you land when you came back from China the second time?
A. Vancouver.
Q. What year was that?
A. Twenty-fifth year of Kwong Suey.
Q. What way did you go out when you went back home?
A. Went out by the way of Malone.
Q. The first time?
A. The last time.
Q. What way did you go back the first time?
A. Way of San Francisco and came back by the way of San Francisco.
Q. Did you have to take out any papers the first time you went back to China, did you file any papers with the collector at San Francisco?
A. I don't know; I went home and came back, and didn't file any papers at that time.
Q. The first time?
A. Yes, sir.
Q. You took this paper out in New York?
A. Yes, sir.
Q. And you made a sworn application at the time you took out the paper?
A. No; I didn't make any application.
Q. You didn't make any application?
A. No, sir.
Q. How did you get this paper?
12 A. There was a white man in New York who sells wholesale laundry supplies, and he went and got it for me.
Q. You didn't go down to the office at all?
A. He went with me.
Q. When you got this paper you had to make out a paper and sign it?
A. Yes, sir; I signed my name.
Q. Is that statement true?
A. Yes, sir.
Q. Did you ever appear in court before in a case of this kind?
A. No, sir; never.
Q. This is the first time you ever appeared in court as a witness?
A. Yes, sir.
Q. How many children did your sister have?
A. Only this one.
Q. This one boy?
A. Yes, sir.
Q. How did you know this boy was here?
A. A few days ago I got a letter from him saying that he was here.
Q. Where is that letter?
A. I destroyed it after I read it.
Q. What did you destroy it for?

A. Nothing particular; I didn't think there was anything particular, and I destroyed it.

Q. Do you destroy your letters?

A. All the letters I receive from home or anywhere else I destroy them.

Q. What year did you go back to China the second time?

A. Twenty-third year of Kwong Suey.

Q. What year did you return?

A. Next May it will be two years since I came back.

Q. You say you lived in Dupont St. in San Francisco for ten years?

A. Yes, sir.

13 Q. What kind of a building was this that you lived in with your sister?

A. Brick building.

Q. How many stories high?

A. Three stories high.

Q. Is that building still there?

A. Yes, sir.

Q. You didn't know that this boy was coming or was here until you received this letter from him in Plattsburgh, did you?

A. Between two or three months I got a letter from home saying that he was coming and then a month ago I received a letter from Montreal.

Q. Have you got any of those letters?

A. No, sir.

Q. Who wrote you from here that he was in jail in Plattsburgh?

A. The boy himself wrote to me.

Q. You said you were a member of your sister's family while you were in San Francisco?

A. Yes, sir.

Q. How far did Gen. Coffield live from your sister's?

A. Santa Favro.

Q. How far is it from San Francisco?

A. About thirty miles.

Q. Did you spend every Sunday with your sister?

A. Sometimes every week, sometimes twice a week and sometimes once a week.

Q. Who did the cooking for Gen. Coffi*l*ed while you were away?

A. Some hired girls, he had a few hired girls besides me.

Q. Was Gen. Coffield in the army or retired from the army?

A. Yes, sir, but don't know where he belonged.

Q. Then he was stationed at the garrison?

A. I don't know but I know I cooked for him.

Q. Any soldiers around there?

A. No, only a few.

14 Q. How large a family did this Gen. Coffield have?

A. Himself, his wife, his nephews, his cousins.

Q. What year did you cook for Gen. Coffield?

A. I can't tell all, it has been so long.

Q. Was it the first two years you were in the United States or

the last before you went back to China, that you worked for Gen. Coffield?

A. After I came to the United States about two years, then I went to cook for him.

By the COURT:

Q. How old were you when you came to United States?
A. Fifteen years old.
Q. What did you do when you were home in China?
A. School.
Q. What was your father's business?
A. He had a business in Hong Kong.
Q. What was his business?
A. Money exchange.
Q. Is he living now?
A. Yes, sir; he is living, but he is not living in Hong Kong now, he is so old he is home.
Q. Where is his home?
A. Tai Young Bee.
Q. Sun Ning district?
A. Yes, sir.
Q. That is the same place you told you came from?
A. Yes, sir.
Q. Where does your sister live in China?
A. Low Hot.
Q. How far is that from where your father lived?
A. About two miles.
Q. How many children has she?
A. Only this one.
Q. That is all?
A. Yes, sir.

By Mr. DWYER:

Q. How many brothers and sisters have you got?
A. Only one brother and one sister.

Case adjourned to the 6th day of May, 1901, 9 o'clock a. m.

15 United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHIN BAK KAN.

Adjourned hearing had in the above-entitled case before Hon. William V. S. Woodward, United States commissioner, at Plattsburgh, New York, on the 17th day of May, 1901, 9 o'clock, a. m.

Appearances.

Same appearances as on last hearing.
Defendants in court in person.

TERRANCE F. McGOWAN, sworn as a witness in behalf of the United States, testified as follows:

Direct examination by Mr. OWEN:

Q. What is your business, Mr. McGowan?
A. Deputy collector of internal revenue, third district of New York.
Q. And you have been such deputy collector how long?
A. Since June 20th, 1898.
Q. Have you the application upon which certificate No. 28,108 was issued to Gong Wing?
A. Yes, sir.
Q. Where was that application taken from by you?
A. From the office of the collector of internal revenue, third district of New York.
16 Q. And was on file as a public record, was it?
A. Yes, sir.
Q. And was taken by you from the files of the office of the collector of internal revenue, third district of New York.
A. Yes, sir.
Q. (Paper shown witness.) Is that the application?
A. Yes, sir.

Application marked Exhibit B for identification.

Cross-examination by Mr. RILEY:

Q. From whom did you get this application, Exhibit B?
A. From Ferdinand Eidman, collector of internal revenue, third district of New York.
Q. Where was he when he gave it to you?
A. In the office of the collector of internal revenue, third district of New York.
Q. That is all you know about its being on file, that it was delivered to you by the collector?
A. That is all.
Q. Were you a deputy collector of internal revenue seven years ago?
A. Yes, sir.
Q. Do you know a Chinese person by the name of Gong Wing?
A. No, sir.
Q. You have no knowledge that Gong Wing signed Exhibit B.
A. No, sir.
Q. You have no personal knowledge that Plaintiff's Exhibit B was taken from the files of the office of the collector of internal revenue, third district of New York?
A. Yes, sir, I have personal knowledge.
Q. You saw it taken from the files of the office?
A. I took it from the files of the office myself with the directions of the collector.

17 United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHIN BAK KAN.

Adjourned hearing had in the above-entitled action before Hon. Fred W. Dudley, United States commissioner, at the grand jury room in the court-house, in the village of Plattsburgh, New York, on the 10th day of July, 1901.

Appearances.

Hon. H. E. Owen, assistant United States attorney, appears for the United States.

R. M. Moore, Esq., and John B. Riley, Esq., of counsel, appear for the defendants.

Defendant in court in charge of Marshal Dow.

Thomas W. G. Wallace sworn as interpreter.

LEE SING, sworn as a witness in behalf of the United States, testified as follows:

Direct examination by Mr. OWEN:

Q. How old are you?
A. Forty-one.
Q. Where were you born?
A. China.
Q. How long have you been in the United States?
A. Twenty-seven years.
Q. Do you know a Chinese person by the name of Gong Wing?
A. Yes, sir.
18 Q. Do you know where he lives now?
A. No. 16 Pell St., New York.
Q. When did you first know him?
A. He arrived on the City of Pekin, in July, 1879.
Q. Where did you first see him?
A. First saw him in San Francisco when he was arriving.
Q. At the wharf?
A. As soon as he was at the wharf, when he was landing.
Q. What occasion did you have to go to the wharf?
A. I went down there to meet some cousins.
Q. Do you know where he went from the wharf?
A. He went to the store of Kwong Yet Woo, 802 Commercial St.
Q. Any Chinese women with him at the wharf or accompanied him to 802 Commercial St.?
A. No, sir.
Q. Where did you live in San Francisco?
A. No. 830 Dupont street.
Q. Do you know what was located at 847 Dupont St., during the years you lived there?
A. Wong Hung.

Q. How long did you live in San Francisco?
A. Eleven years.
Q. How many stories to that building, No. 847 Dupont St.?
A. Three floors.
Q. What was on the first floor?
A. Grocery.
Q. What was on the second?
A. Sort of a warehouse.
Q. What was on the third floor?
A. My friend lived there and rented two rooms.
Q. And one else lived on the third floor?
A. Two roomers, Wong Sang and Ling Sing.
Q. Any Chinese women live on the third floor during the years you lived in San Francisco?
A. No; there were no women there; the rooms were small.
Q. Any Chinese women on the second floor of that building?
A. No Chinese women there.
Q. How often did you visit that store?
A. Once or twice a week.

Cross-examination by Mr. MOORE:

Q. You have been in the United States twenty-seven years?
A. Yes, sir.
Q. What is this man's name that you know?
A. Gong Wing.
Q. What year of Kwong Suey was it that he came to the United States?
A. 1879.
Q. What year of Kwong Suey was it?
A. Fifth year of Kwong Suey.
Q. Who was the man that rented the third floor of that 847 Dupont St.?
A. Wong Hung; he was the proprietor of the store below.
Q. Who rented the third floor?
A. Wong Sang and Ling Sing.
Q. Who rented the second floor?
A. Warehouse, part and parcel of the store.
Q. What store?
A. Wong Hong.
Q. What kind of a building was this, stone, brick or wood?
A. Wood.
Q. Sure about that?
A. Yes, sir.
Q. You came to the United States 27 years ago?
A. Yes, sir.
Q. How long did you live in San Francisco?
A. Eleven years.
Q. Then where did you go?
A. Philadelphia.
Q. How long did you live in Philadelphia?

A. Twelve years.
Q. Then where did you go?
A. New York.
Q. How long in New York?
A. About 4 years.
Q. Who else was in this store, 847 Dupont St.?
A. Wong Hung and his nephew.
Q. What is his name?
A. Wong Lee.
Q. Who else?
A. Ling Sing.
Q. Who else?
A. These three men.
Q. Anybody else?
A. That is all.
Q. You said they rented some rooms there on the third floor, didn't they?
A. They rented two rooms.
Q. Do you know who lived in those rooms?
A. Wong Sand and Ling Sing.
Q. All the 11 years you were in San Francisco?
A. Yes, sir.
Q. Who else lived in the building besides these five people you have spoken of?
A. No one else.
Q. Was that a wooden building all the time you live- in San Francisco?
A. Yes, sir.
Q. And only three stories high?
A. Yes, sir.
Q. Didn't it have a brick front?
A. No brick.
Q. How far is that from Commercial street?
A. A little over two streets.
Q. This Gong Wing that you knew lived on Commercial street?
A. First went there, yes.
Q. Who first went there?
A. Gong Wing.
Q. Do you know how long he lived on Commercial St.?
A. I don't know how many years he lived there, but I saw
21 him coming and going there for a number of years.
Q. During this time did you see any Chinese women living in San Francisco during the time you lived there?
A. Yes, quite a number.
Q. Where does this Gong Wing live now, if you know?
A. New York.
Q. Whereabouts?
A. No. 16 Pell St.
Q. How long has he lived there?
A. I don't know how long he has been there, but I have seen him there for the last two years.

Q. How old is he?
A. About 38 years of age, I think.
Q. Have you ever been a witness in a Chinese case before?
A. No, sir.
Q. Never?
A. Yes, I have been.
Q. Where?
A. I have been to Malone.
Q. When?
A. Over a year ago.
Q. What case did you testify in?
A. I don't remember the title of the case.
Q. Do you remember the name of the witness who testifed for the defendant there?
A. I don't recall it.
Q. Ever testify in any other case?
A. That is the only time.
Q. Haven't you been over to Burlington?
A. No, sir.
Q. Haven't you been to Malone more than once?
A. Only once.
Q. What was what time?
A. A little over a year ago, I can't recollect the exact date.
Q. Can't you tell anything about the case that you were sworn in the case in Malone?
A. I do remember some of it.
Q. What is the case?
22 A. I testified I knew him in China, his name was Ah Kieu.
Q. What name did you go by in Malone?
A. Lee Sing.
Q. Didn't you testify there that you knew this man there, Ah Kieu?
A. I didn't testify about a person called Ah Kieu, I testified about a bridge; I testified about a brother-in-law.
Q. Did you testify about your brother-in-law?
A. Testified about my own brother-in-law.
Q. What is his name?
A. Lee Quon.
Q. Was this Lee Quon a witness for the defendant?
A. His brother-in-law was not a witness.
Q. Was your brother-in-law there, or what did you do?
A. It was a man by the name of Koong Leung who had a son at 830 Dupont St., and I testified he didn't have any.
Q. When was it?
A. I don't remember.
Q. Whereabouts did you live when you were in San Francisco?
A. No. 830 Dupont St.
Q. Whereabouts did this Koong Lung live?
A. No. 830 Dupont St., in the store.

Q. Did you testify in Malone that Koong Lung lived at 808 Dupont St.?
A. I didn't testify.
Q. Did you testify that he lived at 830 Dupont St., and no other place?
A. Yes, sir.
Q. Do you know who lived in all the stores in Chinatown, San Francisco?
A. No; I don't know.
Q. Do you know who lived in any of the stores in Dupont St., except 830 and 847 Dupont St.?
A. I knew some and didn't know others.
23 Q. Do you know who lived at 845 Dupont St.?
A. No, sir; don't remember.
Q. Do you know who lived at 843 Dupont St.?
A. I don't know.
Q. Do you know who lived at 841 Dupont St.?
A. I don't remember.
Q. Do you know who lived at 839 Dupont St.?
A. I don't remember.
Q. Do you know who lived at 837 Dupont St.?
A. I don't remember.
Q. Do you remember who lived at 835 Dupont St.?
A. I don't remember.
Q. Do you remember who lived at 834 Dupont St.?
A. I don't remember.
Q. Do you know who lived at 828 Dupont St.?
A. Don't remember.
Q. Do you know who lived at 832 Dupont St.?
A. Don't remember.
Q. Do you know whether it was an American or Chinese store at 832 Dupont St.?
A. Chinese store, but some white people go in there and go out.
Q. Do you know who lived at 834 Dupont St.?
A. Don't remember.
Q. Do you know who lived at 836 Dupont St.?
A. Don't know.
Q. Do you know who lived at 838 Dupont St.?
A. Don't know.
Q. Do you know who lived at 840 Dupont St.?
A. Don't know.
Q. Do you know who lived at 842 Dupont St.?
A. Don't remember.
Q. Do you know who lived at 846 Dupont St.?
A. Don't know.
Q. Do you remember who lived at 848 Dupont St.?
A. Don't remember.
Q. Do you remember who lived at 849 Dupont St.?
A. Don't remember.
Q. Do you know who lived at 851 Dupont St.?
A. Don't remember.

Q. Do you know what kind of a store was at 851 Dupont St.?
A. No.
24 Q. Do you know what kind of a store was at 839 Dupont St.?
A. Don't remember.
Q. Do you know what kind of a store was at 847 Dupont St.?
A. Chinese grocery.

Government and defendants rest.
Evidence closed.
Case submitted.

25 *Judgment.*

United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA }
vs.
CHIN BAK KAN. }

Be it remembered that on the 13th day of March, A. D. 1901, complaint was made under oath by George W. Ketcham, on behalf of the United States, before William V. S. Woodward, a commissioner of the U. S. district court, for said district, charging that Chin Bak Kan, on the 13th day of March, A. D. 1901, did unlawfully come into the United States from Canada, he, said Chin Bak Kan, being then and there a Chinese person and laborer and not being a diplomatic or other officer of the Chinese, or any other government, and without producing the certificate required of Chinese person- seeking to enter the United States, and that he was not entitled to be or remain within the United States; and thereupon said commissioner, William V. S. Woodward, issued a warrant for the arrest of said Chin Bak Kan, to F. G. Roby, deputy United States marshal, for said district, who arrested said Chin Bak Kan and brought him before said Woodward on the 15th day of March, A. D. 1901.

26 And the said Chin Bak Kan was thereupon informed of the charge so made against him, and was advised that he would be permitted to make a statement without or with oath, or to refuse to make any statement or to answer any question put to him, and was entitled to a reasonable time to send for and advise with counsel, and to procure the attendance of witnesses.

And the said Chin Bak Kan pleaded not guilty to said charge, but admitted that he had just come into the United States; and was then and thereafter represented by R. M. Moore, Esq., his counsel.

And thereafter, a hearing and trial was commenced before said Commissioner William V. S. Woodward, upon said charge and issue so joined, and testimony duly given before him, which trial said Commissioner William V. S. Woodward was unable to finish on account of illness, and thereafter and on the 24th day of June, 1901, by a stipulation duly made in open court, by and between the attorneys for the United States and the attorneys for the defend-

ant, the defendant then being in court, it was stipulated and agreed that the trial so commenced before Commissioner Woodward should be continued before me, and that evidence taken before him should be considered by me, and my decision rendered thereon, and I, having fully considered said allegations and testimony and having heard R. M. Moore, Esq., for the defendant and Hon. H. E. Owen for the United States.

27 I now hereby find and adjudge, that the said Chin Bak Kan is a Chinese person and laborer, that he is not a diplomatic, or other officer of the Chinese or any other government, and unlawfully entered the United States, as charged in said complaint.

And I further adjudge him, said Chin Bak Kan guilty of not being lawfully entitled to be, or remain in the United States.

I further find and adjudge, that he, said Chin Bak Kan came from the Empire of China but he has not made it appear to me, that he was a subject or a citizen of some other country than China.

And I hereby order and adjudge, said Chin Bak Kan to be immediately removed from the United States to the Empire of China. A certified copy of this judgment shall be the process upon which said removal of said Chin Bak Kan shall be made from the United States to the Empire of China.

And said process shall be executed by Hon. C. D. MacDougall, U. S. marshal for said district.

In testimony whereof, I have hereunto signed my name officially and affixed my seal this 20 day of July, 1901.

[L. S.]

FRED W. DUDLEY,
United States Commissioner, Northern District of New York.

28 UNITED STATES COMMISSIONER'S COURT, *Northern District of New York,* } ss:

I hereby certify that I have compared the foregoing with an original judgment made, and duly entered upon my records, and that I find the same to be a correct transcript therefrom, and of the whole of such original.

In testimony whereof, I have hereunto signed my name officially this 20 day of July, 1901.

FRED W. DUDLEY,
United States Commissioner, Northern District of New York.

Indorsed: Judgment.

29 *Complaint.*

UNITED STATES OF AMERICA, *Northern District of New York,* } ss.

Before me, William V. S. Woodward, a United States commissioner in and for said district, personally came G. W. Ketcham, of Malone, N. Y., who being duly sworn, on his oath says that he is informed

and verily believes that Chin Bak Kan, of China, at Burke, in said district, on or about the 13 day of March, A. D. 1901, did then and there knowingly, wrongfully, and unlawfully come from Canada, in the province of Quebec, into the northern district of New York, to wit: into Burke, in the county of Franklin, State of New York, in the United States, he the said Chin Bak Kan being then and there a Chinese person and laborer, and a person prohibited by the laws of the United States of America from being and remaining in the United States, and he, the said Chin Bak Kan, then and there being such Chinese person, as aforesaid, was then and there found unlawfully in the United States, at Burke, aforesaid, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace of the United States of America and their dignity.

G. W. KETCHAM.

Sworn and subscribed before me the 13 day of March, 1901.

WM. V. S. WOODWARD,
U. S. Commissioner, Northern District of New York, Plattsburgh, New York.

Indorsed: Complaint.

30 *Warrant to Apprehend.*

To the marshal of the United States for the northern district of New York, and to his deputies, and to any and either of them:

Whereas, complaint has this day been made by G. W. Ketcham on oath, before me, William V. S. Woodward, a commissioner of the United States for the northern district of New York, charging that Chin Bak Kan did, on or about the 13 day of March, 1901, at Burke in said district, knowingly and wrongfully come from Canada, in the province of Quebec, into the northern district of New York, to wit: into Burke in the county of Franklin and State of New York, in the United States, he the said Chin Bak Kan being then and there a Chinese person and laborer, and a person prohibited by the laws of the United States of America from being and remaining in the United States, and he the said Chin Bak Kan then and there being such Chinese person as aforesaid, was then and there found unlawfully in the United States at Burke aforesaid, in violation of the acts of Congress in such case made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chin Bak Kan and bring his body forthwith before me, one of the commissioners appointed by the district court of the United
31 States for the northern district of New York, at my office in Plattsburgh, N. Y., that he may then and there be dealt with according to law for the said offence.

Given under my hand and seal this 13 day of March, in the year

of our Lord one thousand nine hundred and one and of our
[L. S.] Independence the one hundred and twenty-fifth.

WM. V. S. WOODWARD,
Commissioner of the United States for the Northern District of New York, Plattsburgh, N. Y.

I certify, that on the 13 day of M'ch, 1901, the within-named defendant was arrested at Burke, N. Y., and on the 15 day of M'ch, 1901, conveyed before the within-named commissioner at his office in Plattsburgh, N. Y.

C. D. MACDOUGALL,
United States Marshal.
F. G. ROBY, *Deputy.*

Indorsed: Warrant to apprehend. Rec'd U. S. marshal's office, Syracuse, N. Y. Mar. 18, 1901.

Indorsement on cover: U. S. commissioner's court, northern dist. of New York. Miss. 26. United States ag'st. Chin Bak Kan. commissioner's return. Filed Sep. 9, 1901, W. S. Doolittle, clerk.

32 *Order Dismissing Appeal from Decision of U. S. Commissioner.*

At a special term of the United States district court, for the northern district of New York, held at the Federal building, in the city of Utica, on the 11th day of September, 1901.

Present: Hon. Alfred C. Coxe, U. S. district judge, presiding.

THE UNITED STATES OF AMERICA
vs.
CHIN BACK KAN.

The appeal in the above-entitled action having been brought on for hearing, at a special term of the United States district court, held at the Federal building, in the city of Utica, in and for the northern district of New York, and after hearing John B. Riley, Esq., attorney for the defendant, and George B. Curtiss, United States district attorney, for the United States of America, and after due consideration, it is hereby

Ordered: that the appeal in the above-entitled action be dismissed and that the judgment of deportation of the defendant Chin Bak Kan heretofore made, be, and the same hereby is, affirmed.

A. C. C.

Indorsed: Order. Filed Sep. 11, 1901, W. S. Doolittle, clerk.

33 *Bail Bond.*

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Be it remembered that on the 15 day of October, 1901, before me John A. Shields, one of the United States commissioners for the

southern district of New York, duly authorized to take acknowledgements of bail, affidavits and depositions, personally came Chin Bak Kan principal, and Morris Isaacs, surety, and severally acknowledged themselves to owe to the United States of America, each the sum of $500, separately to be levied and made of their respective goods, chattels, lands and tenements, to the use of the United States, if default shall be made in the condition following, to wit:

Whereas, the said Chin Bak Kan is now detained in the custody of the United States marshal for the northern district of New York, under commitment and warrant of deportation issued under the Chinese exclusion acts, which order and warrant were affirmed on appeal to the United States district court for the northern district of New York; and

Whereas, said Chin Bak Kan has taken an appeal to the United States Supreme Court from said order and warrant of said district court, and

Whereas, the Hon. R. W. Peckham, associate justice of said United States Supreme Court in and under said appeal did
34 order that said Chin Bak Kan give a bond in the sum of $500, with sufficient surety for his appearance, to answer the exigency and determination of said appeal, and to personally abide the final decision and determination thereof, in default of which said Chin Bak Kan remain in custody, and did further authorize any United States commissioner or commissioners in the second circuit to take such recognizance, and approve the same;

Now, therefore, the condition of said recognizance is such that if the said Chin Bak Kan shall duly personally appear in said United States district court for the northern district of New York, to answer the exigency and determination of said appeal, and personally abide the final decision and determination of said United States Supreme Court, and of the said district court upon the mandate of said United States Supreme Court, upon the condition aforesaid, and upon the entering of said order upon said appeal, and obey and abide the order of said district court, then this recognizance to be void; otherwise to be and remain in full force and virtue.

Signature.

Chinese characters. [SEAL.]
M. ISAACS. [SEAL.]

Taken and acknowledged before me the day and year first above written as to Morris Isaacs surety.

[L. S.]

JOHN A. SHIELDS,
U. S. Commissioner, Southern District of New York.

Taken and acknowledged before me this 18th day of October, 1901, as to Chin Bak Kan principal.

[L. S.]

A. J. NORTHRUP,
U. S. Commissioner.

35 SOUTHERN DISTRICT OF NEW YORK, ss:

Morris Isaacs, being duly sworn, deposes and says: That he resides at No. 213 East 87 street in the *in the* city of New York, county and State of New York; that he is worth upwards of $25,000 over and above all his liabilities actual and contingent; that he is the owner in fee-simple of premises No. 213 East 87th street in the city and county of New York, which are worth the sum of $14,000 and *is* subject to mortgages aggregating $8,000, but to no other incumbrance whatever; that he is also the owner in fee-simple of premises No. 6 Mott street in the city and county of New York, worth the sum of $25,000, and which are subject to mortgages aggregating $14,500, but to no other incumbrance whatsoever; that he makes these statements in order to secure his acceptance as bail herein.

M. ISAACS.

Sworn to before me this 15th day of October, 1901.

JOHN A. SHIELDS,

[L. S.] *U. S. Commissioner, S. D. of N. Y.*

I, John A. Shields, U. S. commissioner for the southern district of New York, do hereby by virtue of the order of Hon. Rufus W. Peckham made herein October 1st, 1901, approve of the form of the foregoing bond, and also of the sufficiency of the surety thereto.

Dated New York, October 15, 1901.

JOHN A. SHIELDS,

[L. S.] *U. S. Commissioner, Southern District of New York.*

Indorsed: Bail bond. Filed Oct. 19, 1901, W. S. Doolittle, clerk.

36 *Petition for and Allowance of Appeal, with Stay and Proof of Service.*

United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN BAK KAN, Appellant.

To the justices of the Supreme Court of the United States:

Chin Bak Kan, the appellant defendant herein, hereby applies for the allowance of an appeal to the Supreme Court of the United States, from the judgment, order and decision of the United States district court for the northern district of New York, entered herein on the 12th day of September, 1901.

LEWINSON, KOHLER & SCHATTMAN,
Attorneys for Appellants.

The foregoing application is granted and appeal allowed, and it is further ordered that this appeal shall operate as a supersedeas,

and the execution of the warrant of deportation is stayed pending the appeal.

Dated Albany, Oct. 1, 1901.

R. W. PECKHAM,
Associate Justice U. S. Supreme Court.

37 United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN BAK KAN, Appellant.

Due service of the petition for and allowance of appeal, with stay of execution of warrant of deportation pending appeal, and order authorizing bail endorsed thereon, bond for damages and costs, with approval endorsed thereon, assignment of errors and citation in the above-entitled action is hereby admitted.

Dated New York, October 7, 1901.

GEO. B. CURTISS,
U. S. Attorney for the Northern District of New York.

Indorsed: Petition for and allowance of appeal with stay & proof of service. Appellant is authorized after service of the citation herein to give bail pending the appeal in the sum of $500 with sufficient surety, and any U. S. commissioner or commissioners within the second circuit is authorized to take and approve such bail bond. Oct. 1, 1901. R. W. Peckham, assoc. justice U. S. Sup. Court. Filed Oct. 22, 1901, W. S. Doolittle, clerk.

38 *Bond for Damages and Costs.*

United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN BAK KAN, Appellant.

Know all men by these presents that we, Chin Bak Kan, as principal, and Chin Shung Pon surety, are held and firmly bound, jointly and severally, unto the above-named United States in the sum of two hundred and fifty dollars, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the 30 day of September, 1901.

Whereas, the above-named Chin Bak Kan has prosecuted an appeal to the United States Supreme Court to reverse the order made and rendered in the above-entitled proceeding by the judge of the district court of the United States for the northern district of New York;

Now, therefore, the condition of this obligation is such that if the

above-named Chin Bak Kan shall prosecute said appeal to
39 effect and answer all damages and costs, if *they* shall fail to make the said appeal good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHIN SHUNG PON. [SEAL.]

STATE OF NEW YORK, } ss:
County of New York, }

Chin Shung Pon, being duly sworn, says that he is the surety named in and who executed the foregoing bond or undertaking; that he is a resident and householder within the State of New York, residing at 12½ Pell street in the city of New York, and is worth upwards of the sum of $1,000 — dollars over and above all his debts and liabilities, and exclusive of property exempt by law from levy and sale under execution.

CHIN SHUNG PON.

Sworn to before me this 30 day of September, 1901.

LEON HUHNER,
Notary Public, N. Y. Co.

[L. S.]

COUNTY OF NEW YORK, ss:

On this 30 day of September, 1901, before me personally came and appeared Chin Shung Pon to me known and known to me to be one of the individuals mentioned and described in and who
40 executed the foregoing instrument and he duly acknowledged to me that he executed the same.

LEON HUHNER,
Notary Public, N. Y. Co.

[L. S.]

Indorsed: Bond for damages and costs. Approved October 1st, 1901. R. W. Peckham, associate justice, U. S. Supreme Court. Filed Oct. 22, 1901, W. S. Doolittle, clerk.

41 *Assignment of Errors.*

United States Supreme Court.

UNITED STATES, Appellee, }
vs.
CHIN BAK KAN, Appellant. }

The above-named appellant on this appeal from the order of the district court of the United States for the northern district of New York, affirming the order of deportation of U. S. Commissioner Dudley, for his assignment of errors herein, alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular and erroneous for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth, and not subject to the provisions of the Chinese

exclusion acts, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person.

Second. In not holding that said commissioner and court had no jurisdiction over appellant, because appellant was proceeded against by complaint which was not under such oath as is required by law, and the same was insufficient to confer jurisdiction.

42 Third. In not holding that appellant is held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of such commissioner and court his right to be and remain in the United States in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas said provision of law is unconstitutional as applied to appellant who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that section 3 of the act of May 5th, 1892, is inoperative and stands repealed by the treaty of the United States with China, promulgated in 1894, and that a correct and proper construction of said treaty required a holding that said provision stands repealed and of no effect.

Fifth. In not holding that said commissioner and said court had no jurisdiction over appellant under said Chinese exclusion acts, or other provision of law, in that the treaty of the United States with China, promulgated in 1894, does not authorize any proceedings against Chinese persons found within the United States, charged with unlawful entry into the United States, before any United States judge, court or commissioner, and said treaty of the United States with China repealed the provisions of law theretofore in force conferring jurisdiction over proceedings for the deportation of persons of Chinese extraction found in the United States.

43 Sixth. In not ordering appellant's discharge from custody.

Seventh. In not holding upon the evidence that appellant's American citizenship was established.

Eighth. For error in admitting evidence, over defendant's exceptions, in the course of the examination of the witness, Gong Wing, the uncle of appellant, relative to said witness' certificate of registration, and the application therefor appearing in the record as follows:

Q. Have you got a labor certificate?
A. Yes, sir.

Q. Witness requested to produce his labor certificate.
A. Certificate produced.
(Certificate shown witness.)

Q. Is that your certificate?
A. Yes, sir.

Mr. Dwyer offers certificate in evidence for identification of the witness.

The defendant's counsel objects upon the ground that it is incom-

petent, immaterial and the defendant is under no obligation to produce it; that it is not binding upon the defendant, but only for the protection of the witness.

Objection overruled.

Certificate received in evidence.

Marked Plaintiff's Exhibit A.

Labor certificate No. 28108, issued to Gong Wing, on the 12th day of February, 1894, at New York, by Ferdinand Eidman, collector of internal revenue, third district of New York.

LEWINSON, KOHLER & SCHATTMAN,
Attorneys for Appellant.

Indorsed: Assignment of errors. Filed Oct. 22, 1901, W. S. Doolittle, clerk.

44 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the United States of America and the United States marshal for the northern district of New York:

You are hereby cited and admonished to be and appear before the United States Supreme Court, at Washington, in the District of Columbia, on the 29th day of October, 1901, pursuant to an appeal on the part of the petitioner herein, Chin Bak Kan, filed in the clerk's office of the said court in a certain suit or proceeding entitled: United States *vs.* Chin Bak Kan, to show cause, if any there be, why the decision of the United States district court for the northern district of New York, in the said appeal mentioned, should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of Albany in the second circuit, this 1 day of October, 1901.

R. W. PECKHAM,
Associate Justice U. S. Supreme Court.

45 [Endorsed:] Misc. 26. U. S. Supreme Court. United States *vs.* Chin Bak Kan. Citation (Original) Lewinson, Kohler & Schattman attorneys for appellant 119 Nassau St. (Temple court), borough of Manhattan, New York city, N. Y. U. S. district court, N. D. of N. Y. Filed Oct. 22 1901 at — o'clock — m. W. S. Doolittle, clerk. D.

46 UNITED STATES OF AMERICA, }
Northern District of New York, } *ss:*

I, William S. Doolittle, clerk of the district court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify, that the foregoing pages, numbered from 1 to 45 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of United

States *vs.* Chin Bak Kan as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this thirty-first day of October, in the year of our Lord, one thousand nine hundred and one and of the Independence of the said United States, the one hundred and twenty-sixth.

Seal United States District Court, N. Dist. of New York.

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: File No. 18,378. N. New York D. C. U. S. Term No. 525. Chin Bak Kan, appellant, *vs.* The United States. Filed January 21, 1902.

(18,379.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 526.

CHIN YING, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Petition for appeal from decision of United States commissioner	1	1
Affidavit on appeal from decision of United States commissioner	2	1
Order allowing appeal from decision of United States commissioner	3	2
Return of United States commissioner	5	2
Testimony of Lee Hong	7	3
Copy of letter to the Secretary of the Treasury	12	7
Certificate of identification of Sum Jim	15	8
Complaint	19	10
Warrant to apprehend	20	11
Judgment of deportation	22	12
Order dismissing appeal and affirming decision of United States commissioner	25	13
Bond releasing defendant pending appeal to United States Supreme Court	26	14
Petition for appeal to United States Supreme Court, with stay and proof of service	29	15
Bond on appeal	31	16
Assignment of errors	34	17
Citation (original)	37	18
Clerk's certificate	39	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1902.

1 *Petition for Appeal from Decision of United States Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHIN YING, Defendant.

The above-named defendant feeling aggrieved by the order made and entered on the 20th day of July, 1901, in the above-entitled action by Hon. Fred W. Dudley, United States commissioner, in and for the said district, by which it was adjudged that said defendant was a Chinese person found unlawfully in the United States, and that he should be deported to the Empire of China, he does hereby appeal from the said order to the judge of the said United States district court, in and for the northern district of New York, for the reasons specified in the assignment of errors, which is filed herewith; and he prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which the said order was made, duly authenticated, may be sent to the said judge.

Dated July 27th, 1901.

Yours, etc.,

JOHN B. RILEY,
Attorney for Defendants.

Office & post-office address: Plattsburgh, N. Y.

The foregoing appeal is allowed.

A. C. COXE.

2 *Affidavit on Appeal from Decision of United States Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against
CHIN YING, Defendant.

UNITED STATES OF AMERICA,
Northern District of New York, } *ss:*

John B. Riley, being duly sworn, says: That he is the attorney for the defendant in the above-entitled cause, and, upon information and belief, alleges that the order made by the commissioner herein is erroneous and against the just rights of the said defendant, for the following reasons:

First. The commissioner erred in refusing to discharge the defendant upon the evidence produced upon the trial of this cause.

Second. That the commissioner on such trial rejected proper evidence showing the right of the defendant to be and remain in the United States, and admitted immaterial, improper and incompetent testimony.

Third. For other errors appearing in the record of said trial.

JOHN B. RILEY.

Subscribed and sworn to before me this 27th day of July, 1901.
D. J. CLEARY,
Notary Public.

3 *Order Allowing Appeal from Decision of United States Commissioner.*

United States District Court, Northern District of New York.

UNITED STATES OF AMERICA, Plaintiff,
against
CHIN YING, Defendant.

On this 31st day of July, 1901, it is ordered, that the appeal be allowed as prayed for.

And it is further ordered that a copy of the petition for appeal, assignment of error on appeal and order allowing the appeal be served upon the United States attorney and that service be made forthwith by mail, and that a copy of the said papers be served upon the said United States commissioner, Hon. Fred W. Dudley, and Warren Dow, deputy United States marshal.

And it is further ordered that the plaintiff, through its attorney, Hon. George B. Curtiss, be and appear at a session of the United States district court, in and for the northern district of New York, appointed to be held at the city of Utica on the 10th day of Sept., 1901, pursuant to a notice of appeal and allowance thereof filed in the clerk's office of the northern district of New York, wherein The United States of America is plaintiff and Chin Ying is defend-
ant, to show cause, if any, why the judgment and order
4 rendered against the said defendant, as in the said notice of appeal mentioned, should not be set aside and justice done to the parties in that behalf.

And it is further ordered that the said commissioner, Hon. Fred W. Dudley, make return to this court of all papers and proceedings had before him, set forth in the notice of appeal herein.

And it is further ordered that all proceedings be stayed pending this appeal.

A. C. COXE, *U. S. J.*

Indorsed: Petition, affidavit & order. Filed Aug. 3, 1901. W. S. Doolittle, clerk.

5 United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
vs.
CHIN YING.

To the district court of the United States for the northern district of New York:

Pursuant to the annexed writ, I, the undersigned, do respectfully return to the said court that the following are all the proceedings

taken in the above-entitled action, including all the evidence given therein, and the judgment rendered therein, & the exhibits offered & received in evidence.

Dated this 6th day of September, 1901.

FRED W. DUDLEY,
United States Commissioner, Northern Dist. of New York.

6 38 lot. No. 71.

United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHING YING.

Hearing had in the above-entitled action before William V. S. Woodward, Esq., United States commissioner, at the court-house, in Plattsburgh, New York, on the 30th day of April, 1901.

Appearances.

Hon. H. E. Owen, assistant United States attorney, appears for the United States.

R. M. Moore, Esq., and Hon. John B. Riley appear for the defendant.

Defendant in court in charge of Marshall Dow.

Moy Foon sworn as interpreter.

The counsel for the defendant admit that the defendant in a Chinese person and not a member of the exempt class, and that he came into the United States from the Dominion of Canada as charged in the complaint and warrant in this action.

7 LEE HONG, sworn as a witness in behalf of the defendant, testified as follows:

Direct examination by Mr. RILEY:

Q. How old are you?
A. 48.
Q. How many years since you first came to the United States?
A. 31 years.
Q. Where did you land?
A. San Francisco.
Q. How long did you stay there?
A. 10 years.
Q. Where, what street and number?
A. 721 Commercial St.
Q. Where did you go?
A. To New York, 18 Mott street.
Q. How long there?
A. 10 years.
Q. Then where?

A. Went back to China.
Q. How long in China?
A. One year.
Q. Then where?
A. Returned to New York.
Q. Where?
A. 18 Mott street.
Q. How long at 18 Mott street?
A. 10 years.
Q. Are you living there now?
A. Yes, sir.
Q. Have you ever lived at 163 Varick street?
A. Yes, sir.
Q. How long did you live at 163 Varick street?
A. 3 years.
Q. Were you living there at the time you took out this certificate?
A. Yes, sir.
Q. What is your business?
A. Laundryman.
Q. Do you know the defendant?
A. Yes, sir.
Q. Is he related to you?
A. My sister's son.
Q. Where was he born?
A. Born in San Francisco.
Q. What street and number?
A. 721 Commercial street.
Q. Were you living there at that time in the same house?
A. Yes, sir.
8 Q. Did you see the defendant when you were in China the last time?
A. Yes, sir.
Q. How old is he?
A. 31.

Cross-examination by Mr. OWEN:

Q. Is that a photograph of the defendant?
A. Yes, sir.

Paper marked Exhibit A, for identification.

Q. How old was this defendant when he went back to China the first time?
A. 10 years old.
Q. Has he been in the United States since then—since he came the first time?
A. Yes, sir.
Q. How long ago did you first learn that he was in Plattsburgh?
A. The father wrote me that he was coming.
Q. Do you know whether or not he was at a laundry at 2095 Third avenue?

A. No, sir; I do not know.

Q. Do you know whether or not the defendant lived at 2095 Third avenue for five years?

A. No, sir.

Q. He might have had a laundry at 2095 Third avenue and you not know it?

A. Yes, sir.

Q. Do you know that this defendant is your brother?

A. My sister's son.

Q. You don't know whether he has been to the United States since he first went back to China or not, do you?

A. Ten years old when he went back to China.

Q. Has he been in the United States since that time until now?

A. Until now.

Q. Where was this defendant born?

A. San Francisco.

Q. What street and number?

A. 721 Commercial street, San Francisco.

Q. How many floors or stories to that building?

A. Four.

9 Q. What floor did your sister and her family live on?

A. Top floor.

Q. Who else lived there with her?

A. Only my sister and her husband and my nephew lived there.

Q. Any other Chinese families?

A. No, sir.

Q. After you lived in San Francisco where did you go?

A. Came to New York.

Q. How long did you live in New York?

A. 10 years.

Q. Where did you go then?

A. Went back to China.

Q. How long did you live in China?

A. One year.

Q. Then where did you go?

A. Came to New York.

Q. How long have you been in New York?

A. 10 years.

Q. Was the defendant in China when you were there?

A. Yes.

Q. Has this defendant ever worked in New York or lived in New York?

A. No, sir.

Q. Has he ever been in the United States before?

A. He was ten years old and went back to China and just came until now.

Q. Are you sure about that?

A. Yes, sir.

Q. Do you know whether or not he has ever lived at 26 Mott street?

A. No, sir.
Q. You don't know whether or not he has lived there?
A. Don't know.
Q. Do you know whether or not he has been a member of the firm Wah Yuen?
A. I don't know.
Q. Do you know where he was in '97?
A. No, sir.
Q. Do you know where he was in 1898?
A. No, sir.
Q. Do you know where he was in 1896?
A. No, sir.
Q. Or 1895?
A. No, sir.
Q. Have you ever been a witness in a Chinese case before?
A. No, sir.
Q. Is that your labor certificate there?
A. Yes, sir.

Certificate offered in evidence for the purpose of identification of witness.

Certificate received and marked Exhibit B.

Labor certificate, No. 121,739, issued to Lee Hong on the 7th day of April, 1894, at New York, by M. Kerwin, collector of internal revenue, second district of New York.

Mr. Owen asks for an adjournment.

Case adjourned to the 14th day of May, 1901.

United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA
against
CHUNG YING.

Adjourned hearing had in the above-entitled action before Hon. Fred W. Dudley, United States commissioner, at the grand jury room, in the court-house, in the village of Plattsburgh, New York, on the 10th day of July, 1901.

Appearances.

H. E. Owen, Esq., assistant United States attorney, appears for United States.

Robert M. Moore, Esq., and Hon. John B. Riley, appear for the defendant.

By consent the papers marked Exhibit A by United States Commissioner Dudley shall be received in evidence without objection by either side, with the same force & effect as if the witness were personally present & sworn.

12 Copy.

NEW YORK, *January* 31*st*, 1900.

Hon. Secretary of the Treasury, Washington, D. C.

SIR: On behalf of Sum Jim, merchant and member of the firm of Wo Yuen & Co., importers and dealers in Chinese groceries doing business at # 35 Pell street, New York city, I hereby appeal to you from the decision of the collector of customs at San Francisco in refusing him permission to re-enter this country and I also protest against the mode of procedure in his being deported previous to the return of the report as to his status as a merchant from the collector at New York.

I submit herewith for your approval the affidavits of Edward Cole, Louis Voight, George S. Miller and Herman Brown all credible witnesses who had frequent business *business* dealings with the firm of Wo Yuen & Co.—selling them goods, etc., also the affidavits of four Chinese houses of excellent standing in this city.

The reason of the rejection was I believe based upon the testimony of the housekeeper; together with her son and daughter, of the building at # 2079 3rd avenue, this city, who identified the photograph of Sum Jim to be that of the proprietor of a Chinese laundry formerly situate at the above address but closed since December, 1898. I called upon this woman, who refused to give her name, and asked her to make affidavit as to the correctness of the identification which she refused to do, and stated that she could not swear as to the correctness of same as she had only seen the man but once or twice, the son
13 and daughter age thirteen and eleven, respectively, were too young to *to* understand the nature of an oath. The woman further stated that the Chinaman whom she knew as the owner of the laundry spoke English very well and dressed quite stylish. As to the correctness of this I will state, under oath, that I knew Sum Jim for quite some time previous to his departure from the U. S. and always saw him in and about the store of Wo Yuen & Co. and that he spoke but very few words of English and that I never, to the best of my knowledge, saw him dressed in anything but a Chinese coat and American trousers and the other witnesses will bear me out in this statement. I also showed the photograph which is attached to affidavit submitted herewith to several store-keepers in the neighborhood asking them if they could identify same, but they stated they could not separate (one) Chinaman from another, which is what every one not in constant contact with them will state. I *I* would further state that the house of Wo Yuen & Co. has been for a number of years in business and for the past two years done considerable importing and are considered a reliable house by all with whom they do business.

I would ask that in event of your deciding to admit this man that the collector of customs at San Francisco be ordered to hold the papers for a sufficient time in order to enable Sum Jim to return from China where he now is awaiting the result of this appeal.

Respectfully submitted, JAMES V. STOREY.

14 I, James V. Storey, do solemnly and truly swear that all of the above statements, are, to the best of my knowledge and belief, true in every particular.

JAMES V. STOREY.

Sworn to before me this 31st day of January, 1900.
[SEAL.] JOHN J. ROONEY,
Notary Public.

Indorsed: No. 1111 S. A. Chinese. No. 2947 Chinese.

15 Inspector's report. On board the "Doric," November 14, 1899. No. 188. Sum Jum. J. Lynch, inspector. Class, merchant, New York. C. Rickards, interpreter. Ex. S.S. "Doric," November 6, 1899. B. T. S., stenographer.

Q. What is your name?
A. Sum Jum.
Q. What is your occupation?
A. Merchant, New York, Wah Yuen & Co.
Q. How many partners in that firm?
A. 5.
Q. How much capital invested?
A. $5,000.
Q. What is your share?
A. $1,000.
Q. What is your particular duty in the store?
A. Salesman.
Q. How long have you been connected with that firm?
A. 7 or 8 years.
Q. Up to the time you went to China?
A. Yes.
Q. During that time did you engage in any other employment?
A. No.
Q. Have you been a laundryman or cook in New York?
A. No.
Q. Is your firm interested in a laundry in New York?
A. No.
Q. Is your store located in a brick building in New York?
A. Yes; brick building, 26 Mott St.
Q. How many stories high is that building?
A. Three stories; just before I went to China they moved to 35 Pell St.
Q. Is your store on Pell St. a brick building?
A. Yes.
Q. How many stories is that building?
A. When I went to China the building was not completed, so do not know how many stories.
Q. Give me the names of the white men who signed your paper?
A. Mr. H. Cole, pork business, 21 Spring St., I have known him 7 or 8 years.

Q. Has he been in your store?
A. Yes.
Q. Give another name?
A. Mr. H. Brown, liquor business, I have known him 7 or 8 years.
Q. Has he been in your store?
A. Yes; he goes in my store to deliver goods.

Visé—"Belgic," May 29, 1897. No. 7.

16 PL'FF'S EX. "A," W. V. S. W. Apr. 30. '01.

U. S.
vs.
CHIN YING.

Whereas, Sum Jim, whose photograph is hereto attached is about to depart for China upon a temporary visit, with the intention of returning to the United States and of retaining his commercial domicile in the United States during such temporary absence.

[Written across the face:] Departed from San Francisco per steamer Belgic May 29, 1897. John Lynch, inspector, 7.

(Photograph.)

Now therefore, for the better identification of the said Sum Jim, and in order to facilitate his landing upon his said return—

We the undersigned do hereby certify that the said Sum Jim is a domiciled resident of the city of New York, and that he has been such for at least one year last past; that he is a merchant in good standing and a member of the firm of Wo Yuen & Co., engaged in buying and selling Chinese groceries and merchandise at a fixed place of business to wit: No. 26 Mott street, New York city, N. Y., which business is conducted in his name, meaning and intending thereby that he is known and reputed to be a member of said firm, and that he and his partners carry on their business under the commercial name of Wo Yuen & Co., which firm name is a fanciful designation, and does not contain the name of any of the partners of said firm.

That he conducted such business for more than one year prior to the date of this certificate, and that during such time he was not engaged in the performance of any manual labor except such
17 as was necessary in the conduct of his business as such merchant.

Dated: May 15, 1897.

Signature.	Occupation.
Edward Cole, 21 Spring St., N. Y. city	Provision dealer
Herman Brown, 25 Bowery	Liquor dealer.

Sworn to before me this 15 day of May, 1897.

RICHARD MEISTER,
Notary Public, N. Y. Co., 44.

[L. S.]

18 NEW YORK, N. Y., U. S. A., *May* 19, 1897.

I have seen both of the witnesses in this case, and they say that the statement is all right with this qualification which appears to be correct, viz: that the firm of Wo Yuen of which Sum Jim is a member has only been at No. 26 Mott street, a few months; it having been previous to that time at No. 36 Mott street, but the building having been torn down a short while back it removed to its present location, where I found Sum Jim at work apparently as a member of the firm.

In all other respects the witnesses say the statement is correct.

L. W. WISE.

Indorsed: Original certificate of identification of Sum Jim, of Wo Yuen & Co., 26 Mott St., New York city, N. Y., departing for China, via San Francisco, Cal. Certif., 188; serial, 2271. Name, Sum Jim; class, merchant; place, New York. Wo Yuen & Co. Ex. S. S. Doric. Nov. 6, 1899. Registration —. Partnership, 2947 Chinese. Landed —. Denied Dec. 28, 1899. J. P. Jackson, collector. Received New York, Nov. 20, 1899. No. 1–S. Custom-house. Ex. "A." F. W. D., U. S. C.

19 *Complaint.*

UNITED STATES OF AMERICA, *Northern District of New York,* } ss.

Before me, William V. S. Woodward, a United States commissioner in and for said district, personally came G. W. Ketcham, of Malone, N. Y., who being duly sworn, on his oath says that he is informed and verily believes that Chin Ying of China, at Burke in said district, on or about the 13th day of March A. D., 1901, did then and there knowingly, wrongfully, and unlawfully come from Canada, in the province of Quebec, into the northern district of New York, to wit: into Burke in the county of Franklin State of New York, in the United States, he the said Ching Ying being then and there a Chinese person and laborer, and a person prohibited by the laws of the United States of America from being and remaining in the United States, and he, the said Chin Ying, then and there being such Chinese person as aforesaid, was then and there found unlawfully in the United States, at Burke aforesaid, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace of the United States of America and their dignity.

G. W. KETCHAM.

Sworn and subscribed before me the 13th day of March, 1901.

WM. V. S. WOODWARD,
U. S. Commissioner, Northern District of New York, Plattsburgh, N. Y.

Indorsed: Complaint.

20 *Warrant to Apprehend.*

To the marshal of the United States for the northern district of New York, and to his deputies, and to any and either of them:

Whereas, complaint has this day been made by G. W. Ketcham on oath, before me, William V. S. Woodward, a commissioner of the United States for the northern district of New York, charging that Chin Ying did, on or about the 13 day of March, 1901, at Burke in said district, knowingly and wrongfully come from Canada, in the province of Quebec, into the northern district of New York, to wit: into Burke in the county of Franklin and State of New York, in the United States, he the said Chin Ying being then and there a Chinese person and laborer, and a person prohibited by the laws of the United States of America from being and remaining in the United States, and he the said Chin Ying then and there being such Chinese person as aforesaid, was then and there found unlawfully in the United States at Burke aforesaid, in violation of the acts of Congress in such case made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chin Ying and bring his body forthwith before me, one of the commissioners appointed by the district court of the United
21 States for the northern district of New York, at my office in Plattsburgh, N. Y., that he may then and there be dealt with according to law for the said offence.

Given under my hand and seal this 13 day of March, in the year of our Lord one thousand nine hundred and one and of our
[L. S.] Independence the one hundred and twenty-fifth.

WM. V. S. WOODWARD,
Commissioner of the United States for the Northern District of New York, Plattsburgh, N. Y.

I certify, that on the 13 day of M'ch, 1901, the within-named defendant was arrested at Burke, N. Y., and on the 15 day of M'ch, 1901, conveyed before the within-named commissioner at his office in Plattsburgh, N. Y.

C. D. MacDOUGALL,
United States Marshal.
F. G. ROBY, *Deputy.*

Indorsed: Warrant to apprehend. Rec'd U. S. marshal's office, Syracuse, N. Y. Mar. 18, 1901.

22 *Judgment.*

United States Commissioner's Court, Northern District of New York.

UNITED STATES OF AMERICA }
vs.
CHING YING. }

Be it remembered, that on the 13th day of March, A. D., 1901, complaint was made under oath by George W. Ketcham, on behalf of the United States, before William V. S. Woodward, a commissioner of the U. S. district court, for said district, charging that Chin Ying, on the 13th day of March, A. D., 1901, did unlawfully come into the United States from Canada, he, said Chin Ying being then and there a Chinese person and laborer and not being a diplomatic or other officer of the Chinese, or any other government, and without producing the certificate required of Chinese person- seeking to enter the United States, and that he was not entitled to be or remain within the United States; and thereupon said commissioner William V. S. Woodward, issued a warrant for the arrest of said Chin Ying to F. G. Roby, deputy United States marshal, for said district, who arrested said Chin Ying and brought him before said Woodward on the 15th day of March, A. D. 1901.

23 And the said Chin Ying was thereupon informed of the charge so made against him, and was advised that he would be permitted to make a statement without or with oath, or to refuse to make any statement or to answer any question put to him, and was entitled to a reasonable time to send for and advise with counsel, and to procure the attendance of witnesses.

And the said Chin Ying pleaded not guilty to said charge, but admitted that he had just come into the United States; and was then and thereafter represented by R. M. Moore, Esq., his counsel.

And thereafter, a hearing and trial was commenced before said Commissioner William V. S. Woodward, upon said charge and issue so joined, and testimony duly given before him, which trial said Commissioner William V. S. Woodward was unable to finish on account of illness, and thereafter and on the 24 day of June, 1901, by a stipulation duly made in open court, by and between the attorneys for the United States and the attorneys for the defendant, the defendant then being in court, it was stipulated and agreed that the trial so commenced before Commissioner Woodward should be continued before me, and that evidence taken before him should be considered by me, and my decision rendered thereon, and I, having fully considered said allegations and testimony and having heard R. M. Moore, Esq., for the defendant and Hon. H. E. Owen for the United States.

24 I now hereby find and adjudge, that the said Chin Ying is a Chinese person and laborer, that he is not a diplomatic, or other officer of the Chinese or any other government, and unlawfully entered the United States, as charged in said complaint.

And I further adjudge him, said Chin Ying guilty of not being lawfully entitled to be, or remain in the United States.

I further find and adjudge, that he, said Chin Ying came from the Empire of China but he has not made it appear to me, that he was a subject or a citizen of some other country than China.

And I hereby order and adjudge, said Chin Ying to be immediately removed from the United States to the Empire of China. A certified copy of this judgment shall be the process upon which said removal of said Chin Ying shall be made from the United States to the Empire of China.

And said process shall be executed by Hon. C. D. MacDougall, U. S. marshal for said district.

In testimony whereof, I have hereunto signed my name officially and affixed my seal this 20 day of July, 1901.

[L. S.] FRED W. DUDLEY,
United States Commissioner, Northern District of New York.

Indorsed: Judgment.

Indorsement on cover: U. S. com'r's court, northern dist. of N. Y. Misc. 27. United States ag'st Chin Ying. Com'r's return. Filed Sep. 9, 1901, W. S. Doolittle, clerk.

25 *Order Dismissing Appeal and Affirming Decision of United States Commissioner.*

At a special term of the United States district court, for the northern district of New York, held at the Federal building, in the city of Utica, on the 11th day of September, 1901.

Present: Hon. Alfred C. Coxe, U. S. district judge, presiding.

THE UNITED STATES OF AMERICA
vs.
CHIN YING.

The appeal in the above-entitled action having been brought on for hearing, at a special term of the United States district court, held at the Federal building, in the city of Utica, in and for the northern district of New York, and after hearing John B. Riley, Esq., attorney for the defendant, and George B. Curtiss, United States district attorney, for the United States of America, and after due consideration, it is hereby

Ordered: that the appeal in the above-entitled action be dismissed and that the judgment of deportation of the defendant Chin Ying heretofore made, be, and the same hereby is, affirmed.

A. C. C.

Indorsed: Order. Filed Sep. 11, 1901, W. S. Doolittle, clerk.

26 *Bail Bond.*

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Be it remembered that on the 7th day of October, 1901, before me John A. Shields, one of the United States commissioners for the southern district of New York, duly authorized to take acknowledgments of bail, affidavits and depositions, personally came Chin Ying principal, and Michael Morris, surety, and severally acknowledged themselves to owe to the United States of America, each the sum of $500, separately to be levied and made of their respective goods, chattels, lands and tenements, to the use of the United States, if default shall be made in the condition following, to wit:

Whereas, the said Chin Ying is now detained in the custody of the United States marshal for the northern district of New York, under commitment and warrant of deportation issued under the Chinese exclusion acts, which order and warrant were affirmed on appeal to the United States district court for the northern district of New York; and

Whereas, said Chin Ying has taken an appeal to the United States Supreme Court from said order and warrant of said district court, and

Whereas, the Hon. R. W. Peckham, associate justice of said United States Supreme Court in and under said appeal did order that said Chin Ying give a bond in the sum of $500, with
27 sufficient surety for his appearance, to answer the exigency and determination of said appeal, and to personally abide the final decision and determination thereof, in default of which said Chin Ying remain in custody, and did further authorize any United States commissioner or commissioners in the second circuit to take such recognizance, and approve the same;

Now, therefore, the condition of said recognizance is such that if the said Chin Ying shall duly personally appear in said United States district court for the northern district of New York, to answer the exigency and determination of said appeal, and personally abide the final decision and determination of said United States Supreme Court, and of said district court upon the mandate of said United States Supreme Court, upon the condition aforesaid, and upon the entering of said order upon said appeal, and obey and abide the order of said district court, then this recognizance to be void; otherwise to be and remain in full force and virtue. (Signature in Chinese characters.)

Translated CHIN YING. [SEAL.]
THOMAS W. G. WALLACE,
Chinese Interpreter.
MICHAEL MORRIS. [SEAL.]

Taken and acknowledged before me the day and year first above written as to Michael Morris, surety.

[L. S.] JOHN A. SHIELDS,
U. S. Commissioner, Southern District of New York.

Taken and acknowledged before me this 12th day of October, 1901, as to Chin Ying, principal.

[L. S.]

FRED W. DUDLEY,
U. S. Commissioner, Northern Dist. of New York.

28 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Michael Morris being duly sworn, deposes and says: That he resides at No. 79 Bayard street, New York city and is worth upwards of $10,000 over all his liabilities; that he is the owner in fee-simple of premises No. 170 Ludlow street in the city and county of New York, which are worth the sum of $33,000, and are subject to mortgages aggregating the sum of $23,000, but not to any other incumbrances whatever; that he makes these statements in order to secure his acceptance as bail herein.

MICHAEL MORRIS.

Sworn to before me this 7th day of October, 1901.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

I, John A. Shields, U. S. commissioner for the southern district of New York, do hereby by virtue of the order of Hon. Rufus W. Peckham, made herein October 1st, 1901, approve of the form of the foregoing bond, and also of the sufficiency of the surety thereto.

Dated New York, October 7th, 1901.

JOHN A. SHIELDS,

[L. S.] *U. S. Commissioner, S. D. N. Y.*

Indorsed: Bail bond. Filed Oct. 15, 1901, W. S. Doolittle, clerk.

29 *Petition for and Allowance of Appeal, with Stay and Proof of Service.*

United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN YING, Appellant.

To the justices of the Supreme Court of the United States:

Chin Ying the appellant defendant herein hereby applies for the allowance of an appeal to the Supreme Court of the United States, from the judgment, order and decision of the United States district court for the northern district of New York, entered herein on the 12th day of September, 1901.

LEWINSON, KOHLER & SCHATTMAN,
Attorneys for Appellant.

The foregoing application is granted and appeal allowed, and it is further ordered that this appeal shall operate as a supersedeas,

and the execution of the warrant of deportation is stayed pending the appeal.

Dated Albany, Oct. 1st, 1901.

R. W. PECKHAM,
Associate Justice U. S. Supreme Court.

30 United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN YING, Appellant.

Due service of the petition for and allowance of appeal, with stay of execution of warrant of deportation pending appeal, and order authorizing bail endorsed thereon, bond for damages and costs, with approval endorsed thereon, assignment of errors and citation in the above-entitled action is hereby admitted.

Dated New York, October 7, 1901.

GEO. B. CURTISS,
U. S. Attorney for the Northern District of New York.

Indorsed: Petition for and allowance of appeal with stay & proof of service. Appellant is authorized after service of the citation herein to give bail pending the appeal in the sum of $500 with sufficient surety, and any U. S. commissioner or commissioners within the second circuit is authorized to take and approve such bail bond. Oct. 1, 1901. R. W. Peckham, assoc. just. U. S. Sup. Court. Filed Oct. 15, 1901, W. S. Doolittle, clerk.

31 *Bond for Damages and Costs.*

United States Supreme Court.

UNITED STATES, Appellee,
vs.
CHIN YING, Appellant.

Know all men by these presents that we, Chin Ying, as principal, and Lee Yick You, surety, are held and firmly bound, jointly and severally, unto the above-named United States in the sum of two hundred and fifty dollars, to be paid to the United States, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the 30 day of September, 1901.

Whereas, the above-named Chin Ying has prosecuted an appeal to the United States Supreme Court to reverse the order made and rendered in the above-entitled proceeding by the judge of the district court of the United States for the northern district of New York;

Now, therefore, the condition of this obligation is such that if the

above-named Chin Ying shall prosecute said appeal to effect
32 and answer all damages and costs, if he shall fail to make the said appeal good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

LEE YICK YOU. [SEAL.]

STATE OF NEW YORK, }
County of New York, } ss:

Lee Yick You being duly sworn, says that he is the surety named in and who executed the foregoing bond or undertaking; that he is a resident and householder within the State of New York, residing at 34 Pell street, in the city of New York, and is worth upwards of the sum of $1,000 — dollars over and above all his debts and liabilities, and exclusive of property exempt by law from levy and sale under execution.

LEE YICK YOU.

Sworn to before me this 30 day of September, 1901.

LEWIS M. WHITE,
[L. S.] *Notary Public, New York Co.*

COUNTY OF NEW YORK, ss:

On this 30 day of September, 1901, before me personally came and appeared Lee Yick You to me known and known to me to be one of the individuals mentioned and described in and who
33 executed the foregoing instrument and he duly acknowledged to me that he executed the same.

LEWIS M. WHITE,
Notary Public, New York Co.

Indorsed: Bond for damages and costs. Approved October 1st, 1901. R. W. Peckham, associate justice, U. S. Supreme Court. Filed Oct. 15, 1901, W. S. Doolittle, clerk.

34 *Assignment of Errors.*

United States Supreme Court.

UNITED STATES, Appellee, }
vs.
CHIN YING, Appellant. }

The above-named appellant on this appeal from the order of the district court of the United States for the northern district of New York, affirming the order of deportation of U. S. Commissioner Dudley, for his assignment of errors herein alleges and complains that the order appealed from and the proceedings in said court and before said commissioner are illegal, irregular and erroneous for each and all of the following reasons:

First. In not holding that appellant is a citizen of the United States by birth, and not subject to the provisions of the Chinese

exclusion acts, and that the commissioner and judge ordering appellant's deportation had no jurisdiction over his person;

Second. In not holding that said commissioner and court had no jurisdiction over appellant, because appellant was proceeded against by complaint which was not under such oath as is required by law, and the same was insufficient to confer jurisdiction;

35 Third. In not holding that appellant is held in custody in violation of his constitutional rights as a citizen of the United States, he having been required by affirmative proof to prove to the satisfaction of such commissioner and court his right to be and remain in the United States in accordance with section 3 of the act of May 5th, 1892, and in ordering his deportation for failure so to do, whereas said provision of law is unconstitutional as applied to appellant who is and claimed to be a citizen of the United States by birth, of Chinese extraction.

Fourth. In not holding that section 3 of the act of May 5th, 1892, is inoperative and stands repealed by the treaty of the United States with China, promulgated in 1894, and that a correct and proper construction of said treaty required a holding that said provision stands repealed and of no effect.

Fifth. In not holding that said commissioner and said court had no jurisdiction over appellant under said Chinese exclusion act, or other provision of law, in that the treaty of the United States with China, promulgated in 1894, does not authorize any proceedings against Chinese persons found within the United States, charged with unlawful entry into the United States, before any United States judge, court or commissioner, and said treaty of the United States with China repealed the provisions of law theretofore in force conferring jurisdiction over proceedings for the deportation of persons of Chinese extraction found in the United States.

36 Sixth. In not ordering appellant's discharge from custody.

Seventh. In not holding upon the evidence that appellant's American citizenship was established.

LEWINSON, KOHLER & SCHATTMAN,
Attorneys for Appellant.

Indorsed: Assignments of errors. Filed Oct. 15, 1901, W. S. Doolittle, clerk.

37 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the United States of America and the United States marshal for the northern district of New York:

You are hereby cited and admonished to be and appear before the United States Supreme Court, at Washington, in the District of Columbia, on the 29th day of October, 1901, pursuant to an appeal on the part of the petitioner herein, Chin Ying, filed in the clerk's office of the said court in a certain suit or proceeding entitled: United

States *vs.* Chin Ying, to show cause, if any there be, why the decision of the United States district court for the northern district of New York, in the said appeal mentioned, should not be reversed, modified or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of Albany in the second circuit, this 1st day of October, 1901.

R. W. PECKHAM,
Associate Justice U. S. Supreme Court.

38 [Endorsed:] Misc. 27. U. S. Supreme Court. United States *vs.* Chin Ying. Citation (Original) Lewinson, Kohler & Schattman attorneys for appellant 119 Nassau St. (Temple court), borough of Manhattan, New York city, N. Y. U. S. district court, N. D. of N. Y. Filed Oct. 15 1901 at — o'clock — m. W. S. Doolittle, clerk. D.

39 UNITED STATES OF AMERICA, *Northern District of New York,* } ss:

I, William S. Doolittle, clerk of the district court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify, that the foregoing pages, numbered from 1 to 38 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of United States *vs.* Chin Ying as the same remain of record and on file in said office. (Photograph attached to Plaintiff's Exhibit "A" omitted.)

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this first day of November, in the year of our Lord, one thousand nine hundred and one and of the Independence of the said United States, the one hundred and twenty-sixth.

Seal United States District Court, N. Dist. of New York.

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: File No. 18,379. N. New York D. C. U. S. Term No. 526. Chin Ying, appellant, *vs.* The United States. Filed January 21, 1902.